

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

PL

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/276,014 03/25/99 SI LE

A SPI011 (42891)

IM62/0313

WILLIAM E. MC SHANE
CONNOLLY AND HUTZ
1220 MARKET STREET
P O BOX 2207
WILMINGTON DE 19899

EXAMINER

NESSLER, C

ART UNIT PAPER NUMBER

1761

DATE MAILED:

3
03/13/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	Applicant(s)
09/276,014	Lee
Examiner	Group Art Unit
<i>Nealer</i>	1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 11/22/99 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

Responsive to communication(s) filed on 11/22/99.

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

Claim(s) 1-23 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) _____ is/are rejected.

Claim(s) _____ is/are objected to.

Claim(s) 1-23 are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on _____ is approved disapproved.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____ Interview Summary, PTO-413

Notice of Reference(s) Cited, PTO-892 Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948 Other _____

Office Action Summary

Art Unit: 1761

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-13, drawn to hydrogenated starch hydrolysate and products, classified in class 127, subclass 29.
- II. Claims 14-18, drawn to encapsulated particles, classified in class 264, subclass 4.
- III. Claims 19-23, drawn to a flavorant composition, classified in class 426, subclass 650.

The inventions are distinct, each from the other because of the following reasons:

Inventions I, II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as in pharmaceuticals. Invention II has a separate utility such as in cosmetics. Invention III has a separate utility such as in meat products. Also, Inventions II and III do not require the specific hydrogenated starch hydrolysate of Invention I. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

NOTE that Group I contains claims directed to the following patentably distinct species of the claimed invention: **a)** claims 9-11, the starch hydrolysate in sugarless hard boiled candy, **b)** claim 12, the starch hydrolysate mixed with additional additives listed in paragraph B, and **c)** claim 13, the starch hydrolysate as a coating on malic acid or a mixture of acidulents.

Art Unit: 1761

If Group I is elected, applicant is further required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-8 are generic to Group I.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Art Unit: 1761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia L. Nessler whose telephone number is (703) 308-3843.

Cynthia L. Nessler
CYNTHIA L. NESSLER
PRIMARY EXAMINER
GROUP 1300

cn

March 13, 2000